

**Before the  
National Telecommunications and Information Administration, U.S.  
Department of Commerce;  
Rural Utilities Service, U.S. Department of Agriculture  
Washington, D.C. 20230**

In the Matter of	)	
	)	
Implementation of Broadband Initiatives	)	
Program (BIP) and Broadband Technology	)	Docket No. 0907141137–91375–05
Opportunities Program (BTOP)	)	
	)	
American Recovery and Reinvestment	)	
Act of 2009	)	

**COMMENTS OF THE COMMONWEALTH OF PENNSYLVANIA**

**I. The Application & Review Process**

*A. Streamlining the Applications*

The Commonwealth suggests that the NTIA consider delegation of BTOP program administration to states. Under that scenario, NTIA would provide administrative monies to states, and NTIA would administer block grants to states (awarded to each respective states on the basis of some objective basis or formula), and allow states to administer the BTOP program. NTIA would issue a revised NOFA and prescribe the appropriate forms and guidelines to be overseen and implemented by states. This would help alleviate some of the resource availability challenges faced by NTIA and alleviate the necessity of doing state reviews.

*In what ways should RUS and NTIA streamline the applications to reduce the burden on applicants, while still obtaining the requisite information to fulfill the statutory requirements set forth in the Recovery Act?*

The elimination of or amendments to requirements for certain sections within the application [note, unless otherwise indicated, section numbers relate to Infrastructure application form]:

- Section 31 (Professional Engineer Certification)- Drop the requirement for engineering certification until project reaches phase 2 of the process (due diligence); Since the NTIA previously indicated that it expects that fewer than 10% of all submissions will be funded, this will eliminate the burden of incurring professional fees for the vast majority of projects that will not be moving forward;
- Section 44 (Project Budget) /Section 46 Sustainable Adoption (Project Budget) – simplify the project budget requirements until the project reaches phase 2 of the process (due diligence); reserve the granularity for due diligence phase;

- Section 47 (historical financial statements)/Section 49 Sustainable Adoption – drop this requirement for government entities;
- Section 50 (Pro Forma and 5-year forecasting) – drop this requirement until project reaches phase 2; and
- Section 56 (self evaluation) – drop this requirement for BTOP applications; self-evaluation should only apply to BIP applications

Based on our experience, we estimate that the first round of broadband grants cost the Commonwealth of Pennsylvania approximately 20 times the number of hours indicated in your instructions.

Ensure that narrative application section limits are accurate and sufficient.

- Only when attempting to upload information to the online application system was it discovered that the limits specified in the guidelines (e.g. two page) were not accurate. Rather, the amount of text allowed in the application system was significantly less (e.g. 3,000 characters including spaces, or the equivalent of three quarters of a page). This left applicants with no choice but to rewrite and paraphrase their proposals to fit and/or include excess information in the form of disjointed supplemental attachment referencing relevant sections. In the end, the allowable character limits in the online system were not long enough to explain the project design in detail and any supplemental content could not be presented in appropriate context.

Consider utilizing the pdf package submission approach of grants.gov versus the online easygrants system.

- The nature of putting together complex proposals, such as those required by BIP/BTOP, involves the coordination, work, and collaboration of many individuals, disciplines, and organizations. The pdf application package employed by many grants.gov and utilized for the SBDD mapping program is much more user-friendly and allows for the circulation of all application components to appropriate parties for contribution, review, revision, and approval outside of the online system. This has the added benefit of reducing traffic on the application by requiring users to interface with the system to upload information only when application is complete and ready for submission.

*Should the agencies modify the two-step review process, and if so, how?*

Yes, in addition to simplifying the application forms, the NTIA should alter the state review process and require that all applications come to the state to be placed into 3 categories: those that the state highly recommends; those that the state supports; and those that the state does not support. In the NTIA/RUS technical review and due diligence phases, the agencies should only look at projects recommended by the state in categories one and two above. NTIA/RUS would be responsible for phase 2 evaluations. Ideally NTIA/RUS should require states to follow criteria for selection and ensure states do not recommend a disproportionate number of projects for approval.

*Should certain attachments be eliminated, and if so, which ones?*

NTIA should simplify the application process by deferring completion of certain forms until phase 2 (due diligence) and/or by eliminating the requirement to submit certain

forms. While this is not intended to be an exhaustive list, some of the challenges associated with some of the attachments currently prescribed by NTIA/RUS involve:

1. Cost issues eg. network design and engineering certification
2. Complexity issues eg. environmental certifications;
3. Lack of relevance eg. the requirement for governmental applications to submit Income Statements and Balance Sheets;
4. Manual input of potentially hundreds of polygons (census blocks) for multi-county or statewide projects; and
5. The requirement to obtain (competitive) information from carriers eg. pricing and service offerings from existing providers, particularly in cases where the applicant is proposing to provide service to areas where there is no preexisting service.

*Should the agencies re-examine the use of a single application for applicants applying to both BIP and BTOP to fund infrastructure projects?*

Yes, the application form and sets of questions and requirements should be tailored to either the BIP or the BTOP program. Additionally, from the outset, applicants should be required to choose one agency (program) to apply to. Applicants interested in BTOP program should not be “required” to apply to RUS/BIP fully expecting that their application will be denied because of lack of adherence to BIP criteria, or because applicants are unable or unwilling to receive a loan.

*How should NTIA link broadband infrastructure, public computer center and sustainable adoption projects through the application process?*

The Sustainable Adoption program does not lend itself to the same generalized form as an infrastructure or public computing center application since most of the questions do not really apply. Sustainable Adoption projects do not typically relate to or involve infrastructure deployment (unlike the Infrastructure and Public Computer Center Programs)

Thus, we recommend that the application form be divided into 3 sections:

1. A General information section common to all applications;
2. A distinct section for each specific category (Infrastructure, SA and PCC); and
3. Distinct Schedules and Attachments with questions and requirements tailored to each respective category.

In terms of scoring the applications, there is some merit to giving some weight to applications that link Sustainable Adoption or Public Computer projects with Infrastructure projects. This optimizes the federal investment and helps to address the sustainability component.

*1. New Entities. What type of information should RUS and NTIA request from new businesses, particularly those that have been newly created for the purpose of applying for grants under the BIP and BTOP programs? For example, should the agencies eliminate the requirement to provide historical financial statements for recently-created entities?*

NTIA/RUS should eliminate the historical financial statements for both new businesses and government entities. Instead, NTIA should develop a form for new businesses which

requires enough information to ascertain that the newly-formed applicant has the financial and organizational capability to perform the work required by the project. It is important for an applicant to demonstrate its viability and that it can be trusted to be a fiscally solvent and operationally sound commercial, non-profit or public entity.

2. *Consortiums and Public-Private Partnerships. Similarly, how should the application be revised to reflect the participation of consortiums or public-private partnerships in the application process? Should certain critical information be requested from all members of such groups, in addition to the designated lead applicant, to sufficiently evaluate the application? If so, what type of information should RUS and NTIA request?*

NTIA/RUS should request the names of all organizations participating in the consortium or the Public-Private Partnership, the lead individuals in each organization and the date each entity within the consortium established their business. To corroborate the strength of the consortium or partnership, NTIA should request demonstration of the strength of the consortium in the form of Letters of Agreement or Memorandum of Understanding. Another suggestion would be to only allow consortiums when one of the participants involves a governmental entity.

3. *Specification of Service Areas. The broadband infrastructure application required applicants to submit data on a census block level in order to delineate the proposed funded service areas. Some applicants found this requirement burdensome. What level of data collection and documentation should be required of applicants to establish the boundaries of the proposed funded service areas?*

Applicants should supply the geographical boundaries in map and descriptive form but the maps should be submitted as PDF files. The requirement for census blocks was indeed burdensome and accomplished very little in the end. The requirement to map individual census blocks was decidedly cumbersome in the case of one of the Commonwealth's Middle Mile Infrastructure applications. Given that the particular proposal spans across 32 counties, it required manual input of some 800 polygons.

4. *Relationship between BIP and BTOP. The Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project.<sup>4</sup> Section VI.C.1.a.i of the NOFA required that infrastructure applications consisting of proposed funded service areas which are at least 75% rural be submitted to and considered under BIP, with the option of additional consideration under BTOP.<sup>5</sup> According to the NOFA, NTIA will not fund such an application unless RUS has declined to fund it.<sup>6</sup> RUS and NTIA are presently reviewing joint applications consistent with the process set forth in the NOFA. Should these kinds of rural infrastructure applications continue to be required to be submitted to RUS or should the agencies permit rural applications to be submitted directly to NTIA, without having to be submitted to RUS as well, and if so, how should NTIA and RUS proceed in a manner that rewards the leveraging of resources and the most efficient use of Federal funds?*

As stated above, applicants interested in the BTOP program should not be "required" to apply to both RUS/BIP fully expecting that their application will be denied. Those applications should be submitted directly to NTIA which, following initial review, can determine if it is appropriate or opportune to forward or assign those which apply to

RUS. The applicants should be taken out of this process. These instructions were confusing to many applicants.

*Are there situations where it is better to give a loan to an applicant as opposed to a grant? Are there applicants for which a loan would not be acceptable, and if so, how should the programs consider them?*

Given the current state of the economy, there will be an overwhelming reluctance to receive a loan over a grant. The agency should ask the applicant up-front in the application whether it would accept a loan if a grant was denied. There are many applicants who would not take a loan under any circumstances. In the end, many applicants are seeking grants because they have been unable to qualify for a commercial loan (hence the “but for” requirement).

*B. Transparency and Confidentiality. Consistent with the Administration's policy and the Recovery Act's objective to ensure greater transparency in government operations, RUS and NTIA are considering whether they should permit greater access, consistent with applicable Federal laws and regulations, to certain applicant information to other applicants, policymakers, and the public, including state and tribal governments. Should the public be given greater access to application data submitted to BIP and BTOP?*

Yes, the public should be given greater access to application data. Public funds are being expended and there is an expectation on the part of the public for access to adequate information. Information is so sketchy and skeletal on the executive summaries that are posted by the NTIA that it is virtually impossible, in many cases, to pinpoint with any degree of precision the community or the county(ies) where the project(s) would be deployed.

Likewise, states should be given access, if desired or required, to copies of the full application as part of the state review process. Project information (budget, in particular) needs to be more transparent and available for states to “drill down”. It is impossible for states to compare the merits of 2 projects without a side-by-side comparison of more granular information. Two \$20 million projects will be dramatically different when conducting a comparative review armed with more granular information.

*Which data should be made publicly available and which data should be considered confidential or proprietary?*

Only information about proprietary or patented technology that a company might be employing to address a specific project should be considered confidential. Anything else should be made public. In general, private companies are not required to disclose much information. But these programs involve the investment of public funds so RUS/NTIA should err on the side of more disclosure with the exception perhaps of critical node infrastructure elements on the basis of public safety and homeland security concerns.

*For example, RUS and NTIA tentatively conclude that the application's executive summary should be made publicly available for the second round of funding.*

The Commonwealth of Pennsylvania agrees. Further, NTIA must ensure that there is enough information within the executive summary to give any reviewer the pertinent facts of the application including targeted area, type of technology used, project cost and revenue projections. The absence of comprehensive information within the executive summaries presented a challenge in the context of the state reviews. There was insufficient time to obtain and review copies of full proposals (130 in Pennsylvania's case), and a significant number of executive summaries were blatantly devoid of sufficient information. Some applicants even redacted portions of their executive summaries further diluting the level of information.

*C. Outreach and Support. For the initial round of funding, RUS and NTIA provided multiple means of applicant support and outreach, including hosting national workshops and minority outreach seminars, publicly releasing an application guidance manual, posting responses to Frequently Asked Questions on [www.broadbandusa.gov](http://www.broadbandusa.gov), and establishing a Help Desk that fielded thousands of telephone and e-mail inquiries. What method of support and outreach was most effective?*

Because of the short timeframe, and subsequent changes to guidelines and processes witnessed during Round One, none were totally effective. By the end of the process the amount of information released had become so voluminous as to be ineffectual. The most effective communications method for the second round would undoubtedly be the [www.broadbandusa.gov](http://www.broadbandusa.gov) website which ought to serve as the primary focal point for distribution and receipt of information. The website, along with a companion email list-serve with periodic updates, can serve as the host for critical information and documents, FAQs, live webcasts and streaming video of NTIA/RUS presentations. The agencies should diminish or abandon most other outreach methods. By spreading its resources over so many different outlets to reach the public, NTIA/RUS will effectively dilute the message and confuse many of the people you are trying to inform.

*What should be done differently in the next round of funding to best assist applicants?*

"Simplify, simplify, simplify" the application process. Many of the applicants are small businesses or non-profits which do not have the time, resources, or skills required to fully comply with a very demanding process and to adhere to all of the steps and criteria that are currently imposed. Consequently, we would recommend more of a "gate" approach, i.e. have BTOP applicants send in less information initially as part of a simplified application form. Following an expeditious initial review, if applications are deemed to be worthy of further consideration, they are asked for additional information.

The Commonwealth is aware of a number of prospective applicants in Pennsylvania that opted out of Round One due to the complexity of the process, the onerous program and application requirements, and the lack of adequate time. All of these factors created a disincentive for some applicants to proceed with a first round application. NTIA/RUS should anticipate receiving a high volume of applicants (and perhaps more than the first cycle) since Rounds Two and Three will now merge into a single final round.

As was previously suggested, NTIA should consider the issuance of block grants to the states with the final determination to be made by NTIA/RUS. This will accomplish two

things. First, it will force states to carefully examine every application and recommend those that are most closely aligned with needs and priorities. Second, it will force states to rank projects up to the amount of money blocked to them.

*D. NTIA Expert Review Process.* During the first round of funding, NTIA utilized panels of at least three independent reviewers to evaluate BTOP applications. A number of stakeholders have questioned whether this is the most effective approach to evaluating BTOP applications. To further the efficient and expeditious disbursement of BTOP funds, should NTIA continue to rely on unpaid experts as reviewers? Or, should we consider using solely Federal or contractor staff?

As part of the state review process, the Commonwealth utilized its own version of expert reviews through the use of a Subject Matter Expert panel. We were confronted with challenges of our own in terms of identifying individuals and securing their commitment due to the significant time requirements involved and to the existence of conflicts. It was evident that the NTIA had similar, if not more, challenges given the volume of applications. While outside experts bring a good range of perspectives to the table, it is difficult to get them involved in a meaningful way in such tight timeframes.]

It appears that NTIA attempted to replicate some aspects of the PSIC review model with the BTOP endeavor. In the future, the applications should be forwarded to the states for initial review and then to NTIA for a technical review and due diligence of projects that the states would support. NTIA should limit what projects states submit to them to avert a situation where a state recommends an inordinate number of projects. Unfortunately the process itself works against this because there is no apparent limit as to how many grants a state can receive. By failing to impose limits, NTIA has created a situation where the state can abrogate its responsibility in ranking projects or recommend a number of projects that is not commensurate with limited funding availability or recommend a volume of projects that is disproportionate in relation to other states.

## **II. Policy Issues Addressed in the NOFA**

*A. Funding Priorities and Objectives.* Section IV.B of the NOFA establishes the funding limits for the first round of BIP and BTOP funding. In particular, RUS set aside approximately \$2.4 billion in funding, with up to \$1.2 billion available for last mile projects, up to \$800 million available for middle mile projects and up to \$325 million available for a national reserve. NTIA allocated up to \$1.2 billion for broadband infrastructure projects, up to \$50 million for public computer center projects, up to \$150 million for sustainable broadband adoption projects, and up to \$200 million as a national reserve. Many parties have publicly made suggestions as to how the NOFA could be modified to ensure that the Recovery Act funds make the greatest impact possible. RUS and NTIA welcome suggestions for targeted funding proposals and seek comment on how they can better target their remaining funds to achieve the goals of the Recovery Act. Below we set forth some examples of types of projects we could specifically target. We seek comment on these proposals as well as any others. 8 *Id.* at 33110.

RUS and NTIA request commenters that are proposing a more targeted approach for round 2 projects to support their proposal with quantitative estimates of the projected benefits of adopting such an approach. For example, commenters should quantify the impact of their proposal based on such metrics as the number of community anchor institutions committing to service, the number of last mile providers committing to utilize middle mile projects, the number of end users

*reached by the proposal, the number of new jobs created, directly and indirectly, and the projected increase in broadband adoption rates, as well as any other metrics necessary to justify the adoption of their proposal and ensure that the benefits of the Recovery Act are being realized. Commenters should explain the basis and method of calculation for the quantifications they provide.*

The Commonwealth disagrees with any requirement that would make quantitative estimates more stringent. Rather than streamlining the application process, it would make it far more cumbersome. This would be incrementally onerous on applicants. And it will not necessarily be an accurate gauge of the actual customers in the end. Any quantification at the point of application is only a guess at best.

One of the aspects of the first round of grants which made it so difficult was the requirement to include data which was not readily available at any centralized location. NTIA/RUS should point to sources of information that are uniformly available to applicants. You must avoid asking for these types of metrics at all costs or the second round will be as difficult as the first for applicants.

The Commonwealth cautions the NTIA against relying too heavily on quantitative metrics in the evaluation of project impact, as they may not tell the whole story. For example, we point out that one of the quantitative measures requested from Sustainable Adoption applicants during Round One was “Cost per New Subscriber,” with no differentiation or distinction between household and institutional subscribers.

*1. Middle Mile “Comprehensive Community” Projects. Should RUS and/or NTIA focus on or limit round 2 funding on projects that will deliver middle mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities?*

No. It is important for NTIA/RUS to consider as many factors and users as possible so that worthy projects or applicants are not precluded or discouraged from applying. Middle Mile projects in rural areas should be geared to any entity that can derive benefit. Business entities connecting to these middle mile projects may reduce costs to some of the anchor institutions – many of which are social service agencies.

*Should we give priority to those middle mile projects in which there are commitments from last mile service providers to use the middle mile network to serve end users in the community?*

No. Getting commitments long before a middle mile solution is deployed and functional is extremely speculative. Those who indicate they have such agreements should be questioned closely. Some middle mile projects could take as long as 2-3 years to complete given factors such as distance, topography, site acquisition, permitting and access. For many anchor institutions, a commitment at this point would be premature because their funding streams are usually unknown more than one year in the future.

*Should we target projects that create “comprehensive communities” by installing high capacity middle mile facilities between anchor institutions that bring essential health, medical, and educational services to citizens that they may not have today?*



Smaller and remote communities might be penalized if greater weight is afforded to certain types of institutions since these rural and remote communities do not have the benefit of having as many community or institutional assets, in a relative sense. The program should not tie down projects to achieving only these narrow goals. The cost of placing infrastructure in any community can only be sustained if it benefits a wider audience than just the anchor institutions. The agencies might stress that the inclusion of anchor institution participation within the grant would score the grant higher but it should not give preferential set-asides for any particular sort of proposal. It would limit the agencies' discretion and discourage or defeat other worthwhile projects.

*Should certain institutions, such as educational facilities, be given greater weight to reflect their impact on economic development or a greater need or use for broadband services? If so, what specific information should RUS and NTIA request from these institutions?*

NTIA/RUS should consider making awards to a variety of projects across a variety of disciplines. Funding determinations should impact any of the stated programmatic and five (5) statutory purposes embodied in Section 6001 of the Recovery Act. This should be done without favoring any one particular purpose or discipline. Ultimately, the objective is to identify and fund those projects that will provide the greatest impact and the largest public return on investment.

The priority should be on providing a basic level of connectivity across America. It is not equitable to fund next generation internet services when a significant number of communities are still either currently unserved or lack affordable broadband. The result would be the creation of a second tier of a digital divide. We can reliably infer that most of larger educational institutions have reasonable levels of access to broadband facilities and services since they either attract established providers or implement their own localized or interlinked broadband network solutions. Education, health care, and public safety are all equally enviable goals, and one should not be given priority over another. Rather than endorsing one over the other, the various disciplines should be incented to collaborate. Greater weight should not be given to one type of institution or discipline. Greater weight should be given to those projects that demonstrate collaboration by and participation across multiple disciplines and institutions.

*To the extent that RUS and NTIA do focus the remaining funds on "comprehensive community" projects, what attributes should the agencies be looking for in such projects? For example, are they most sustainable to the extent that they are public-private partnerships through which the interests of the community are fully represented? Should we consider the number of existing community anchor institutions that intend to connect to the middle mile network as well as the number of unserved and underserved communities and vulnerable populations (i.e., elderly, low-income, minority) that it will cover?*

The more stringent the requirement for commitment metrics from middle mile applicants, the more onerous and challenging the application becomes. With the timelines being so tight for application submission, there is little time to send letters or get commitments from anchor institutions. Also, for many reasons cited above regarding budgets and projections, these same anchor institutions will be reluctant or even unable to commit to something which might not occur for 2-3 years.

*In addition, should we consider the extent of the geographic footprint as well as any overlap with existing service providers?*

The geographic footprint cannot be considered in isolation of other factors like populations served availability of affordable broadband, etc.

*2. Economic Development. Should RUS and/or NTIA allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment? This option would focus the Federal broadband investment on communities that have worked together on a regional basis to develop an economic development plan. It would encompass a strategy for broadband deployment, and would link how various economic sectors benefit from broadband opportunities. Such a regional approach would seek to ensure that communities have the “buy-in,” and the capacity, and the long-term vision to maximize the benefits of broadband deployment. Using this option, NTIA and RUS could target funding toward both the short term stimulus of project construction and the regions longer term development of sustainable growth and quality jobs. For instance, rather than look at broadband investments in both rural and urban communities as stand-alone actions, should RUS and NTIA seek applications for projects that would systematically link broadband deployment to a variety of complementary economic actions, such as workforce training or entrepreneurial development, through targeted regional economic development strategic plans?*

While this linkage is an enviable goal, the reality is that it is unlikely that there will be enough time to do the necessary planning and preparatory work required to get buy-in and participation from all parties involved. The notion of linkages, as is suggested in the above question, could require multiple rounds of meetings with interested partners, agreements in the form of MOUs, written plans, etc. In other words, it could require months of work. This proposed course of action assumes that “regional economic development strategic plans” exist in the first place. The reality is that such regional economic planning may not be in place.

*Should funds be targeted toward areas, either urban or rural, with innovative economic strategies, or those suffering exceptional economic hardship? Should states or regions with high unemployment rates be specifically targeted for funding?*

All states have been hit hard by the economic downturn. That targeted concept would place states or regions in the awkward and adversarial position of arguing as to which one is worse off. This is not a desirable outcome. Also, by targeting funding in this manner, there is the risk of moving from the providing of service to unserved and underserved areas to providing additional service to well served areas which happen to have a high rate of unemployment due to problems unrelated to broadband availability (e.g. closing of a factory). Unclear what NTIA/RUS define as “innovative economic strategies”. Related to this definition, who would decide what is an innovative economic strategy – peer review, state review, agency review.

*3. Targeted Populations. Should RUS and NTIA allocate a portion of the remaining funds to specific population groups? For example, should the agencies revise elements of the BIP and BTOP programs to ensure that tribal entities, or entities proposing to serve tribal lands, have sufficient resources to provide these historically unserved and underserved areas with access to broadband service?*

There are already initiatives through the federal Universal Service Fund mechanism that directly or indirectly support the deployment of telecommunications broadband facilities and services to tribal areas. Since Pennsylvania is a net contributor State to the federal USF at the approximate level of \$165 million annually, Pennsylvania is already supporting these federal initiatives in other states.

*Similarly, should public housing authorities be specifically targeted for funding as entities serving low-income populations that have traditionally been unserved or underserved by broadband service?*

Yes, if it can be proven by the applicant that the public housing area suffers from the same issues as rural communities without access to affordable broadband.

*How can funds for Public Computer Centers and Sustainable Broadband Adoption projects be targeted to increase broadband access and use among vulnerable populations?*

This can only be done by having someone, like the states, examine the projects and ascertain that they are indeed targeting these populations. Additionally, the states would need to ascertain that the applicants are reputable and capable of completing the project and offering the services.

*Should NTIA shift more BTOP funds into public computer centers than is required by the Recovery Act?*

This is a good idea as long as the money is not transferred from needed middle mile infrastructure projects. Public Computer Centers are very worthy projects but establishing the infrastructure to make them work should be the first priority.

*In what ways would this type of targeted allocation of funding resources best be accomplished under the statutory requirements of each program? Should libraries be targeted as sites for public computer access, and if so, how would BTOP funding interact with e-Rate funding provided through the Schools and Libraries program?*

A great number of the Pennsylvania-based submissions related to Public Computer Centers were submitted by libraries and/or involved library locations. Libraries face fiscal challenges so NTIA should explicitly state that E-Rate is permissible match. This would address some of the sustainability concerns.

*B. Program Definitions. Section III of the NOFA describes several key definitions applicable to BIP and BTOP, such as “unserved area,” “underserved area,” and “broadband.” These definitions were among the most commented upon aspects of the NOFA. For example, a number of applicants have suggested that the definitions of unserved and underserved are unclear and overly restrictive; that they kept many worthy projects, particularly those in urban areas, from being eligible for support; that there was insufficient time to conduct the surveys or market analyses needed to determine the status of a particular census block area; and that they discouraged applicants from leveraging private investment for infrastructure projects.*

All of the above statements were true for Pennsylvania's experience also. NTIA should consider abandoning the added distinction of 'remote' under BTOP program. If it is retained, it should be restricted to the BIP program since it is a rural issue and may not have any applicability to BTOP settings. The Commonwealth of Pennsylvania submitted a Middle Mile application covering 32 counties in northern Pennsylvania. In the case of that particular project, the reliance on RUS data which looks at rural census blocks ( i.e. >50 miles from a population center) results in the inability to consider or serve a large portion of the population in Pennsylvania's northern tier region..

When considering the definition of "unserved" or "underserved" communities, the true measure is not one that is based on speed. Rather, it involves a judgment or finding to whether a particular community has affordable and adequate coverage. Speed is an often an artificial or arbitrary determination and a "one speed fits all" approach is not recommended. The speed requirements of one community or constituent user group can be dramatically different from another's.

*In what ways should these definitions be revised? Should they be modified to include a specific factor relating to the affordability of broadband service or the socioeconomic makeup of a given defined service area, and, if so, how should such factors be measured?*

States should be given broad discretion to recommend grants which will benefit the populations they most want to target. These targets would differ significantly by state. For example, in some states it might be important to target a tribal population and others it might be the rural populations. The tight timelines for grant submission don't give applicants enough time to assemble the metrics needed to justify the grant. Either NTIA/RUS must give applicants sufficient time collect the statistics or ask for metrics which are easier to obtain.

One idea would be for NTIA/RUS to assemble a series of countywide metrics which everyone can use. This way, all applicants are working off the same page. There are plenty of government based statistics and providing applicants with a single source of this data would greatly simplify the application process.

*Should the agencies adopt more objective and readily verifiable measures, and if so, what would they be?*

As mentioned in the previous answer, NTIA/RUS should assemble government statistics and use the same pool of statistics for all applications. Statistics on unemployment, real earnings, poverty, income levels, jobs data, education, etc. are all collected by the government. Whatever metrics are decided upon, do not require applicants to develop their own set of statistics when a lot of this information is readily available in the public domain.

*How should satellite-based proposals be evaluated against these criteria?*

Satellite proposals should be evaluated by the same criteria as all other proposals. Satellite service should not be considered as the panacea to the rural broadband issue. Weather conditions, inability to target a satellite, latency issues, and bandwidth issues all can work against a satellite provider. Satellite may be practical in some areas and not in others.

*With respect to the definition of broadband, some stakeholders criticized the speed thresholds that were adopted and some argued that they were inadequate to support many advanced broadband applications, especially the needs of large institutional users. Should the definition of broadband include a higher speed and should the speeds relate to the types of projects?*

Although it is true the definitions of broadband were relatively low, leave the definition alone and grade projects higher if they can achieve sustained higher bandwidth.

*Should factors other than distance be considered, such as income levels, geographic barriers, and population densities?*

The criteria should be geared to those who most need these services regardless of where they live.

*C. Public Notice of Service Areas. Section VII.B of the NOFA allowed for existing broadband service providers to comment on the applicants' assertions that their proposed funded service areas are unserved or underserved. Some stakeholders have suggested that this rule may reduce incentives for applicants to participate in the BIP and BTOP programs because of the risk that their applications may be disqualified from funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut. How should the public notice process be refined to address this concern?*

Those alleging that service is available should be held to the same stringent standards as those who claim that service is not available. If the agency requires applicants to map potential service down to the census block, then the challenger should be held to the same standard. This avoids the token fiefdom challenges and bland generalizations from providers that we have witnessed. It is not sufficient to merely state that "it's available" or "it's not underserved" without offering evidence or meeting any burden of proof requirement. Enforcement of the same standards and requirements will provide valuable (mapping) info that the NTIA is currently seeking and will feed into SBDD (mapping) program

This was one of the largest concerns with the first round of grants, i.e. the inability to obtain data from the major providers. This information was jealously guarded by the wireless providers. The data obtained by others was suspect at best. This issue isn't going to be solved without government intervention. The only criteria which can be used are the applicants 'best efforts' to obtain data which they reasonably believe to be accurate.

The only other alternative is for NTIA/RUS to supply the data and permit everyone to work from the same page.

The purpose of the State Broadband Data and Development (SBDD) Program broadband mapping grant program is to help states determine where broadband exists in their states. But you were issuing those grants at the same time you expected applicants to already know where broadband existed. This is a huge disconnect in the process.

*What alternative verification methods could be established that would be fair to the applicant and the entity questioning the applicant's service area?*

There are far too many iterations of the definitions of what carriers believe is served or underserved to answer this question. Unless some centralized source of data can be obtained before the second round of grants comes due, the only data NTIA/RUS can rely on is the applicant's efforts to obtain the most accurate data available at the time of the grant.

*Should the public notice process be superseded where data becomes available through the State Broadband Data and Development Grant Program that may be used to verify unserved and underserved areas? What type of information should be collected from the entity questioning the service area and what should be publicly disclosed?*

If any entity questions the service area and that entity does not make its data public, the challenge should be disallowed. 'Public' does not mean a map of the covered service area on the web or other corporate marketing materials, but actual block level GIS data which can be accurately mapped to show where service exists and where it does not.

*D. Interconnection and Nondiscrimination Requirements. Section V.C.2.c of the NOFA establishes the nondiscrimination and interconnection requirements.<sup>12</sup> These requirements generated a substantial amount of debate among applicants and other stakeholders. Although RUS and NTIA are not inclined to make significant changes to the interconnection and nondiscrimination requirements, are any minor adjustments to these requirements necessary? In particular, should they continue to be applied to all types of infrastructure projects regardless of the nature of the entity? Should the scope of the reasonable network management and managed services exceptions be modified, and if so, in what way? Is it necessary to clarify the term "interconnection" or the extent of the interconnection obligation?*

We concur with the agency's inclination not to make changes to these requirements. The Commonwealth feels that the Interconnection and Non-Discrimination impact is best addressed at the regulatory (FCC or state regulatory commission) level since it is an issue of national and/or state-specific impact. NTIA/RUS 'sphere of influence' on this issue is restricted only to those projects that are funded under BIP/BTOP. The Interconnection and Non-Discrimination issue is a national policy judgment that can impact availability and cost for all consumers across America, residential or commercial, urban or rural, remote or not. This debate and policy determination is much broader than the requirements of BTOP/BIP programs.

*E. Sale of Project Assets. Section IX.C.2 of the NOFA generally prohibits the sale or lease of award-funded broadband facilities, unless the sale or lease meets certain conditions. Specifically, the agencies may approve a sale or lease if it is for adequate consideration, the purchaser agrees to fulfill the terms and conditions relating to the project, and either the applicant includes the proposed sale or lease in its application as part of its original request for grant funds or the agencies waive this provision for any sale or lease occurring after the tenth year from the date the grant, loan, or loan/grant award is issued. Some stakeholders have suggested that this rule is overly restrictive and is a barrier to participation in BIP and BTOP. Should this section be revised to adopt a more flexible approach toward awardee mergers, consistent with USDA and DOC regulations, while still ensuring that awardees are not receiving unjust enrichment from the sale of award-funded assets for profit?*

While this issue does not directly impact the Commonwealth, we would submit that the agencies' decision-making on this issue strike a balance between the investment of public dollars versus the evolving nature of the telecommunications industry.

*F. Cost Effectiveness. How should NTIA and RUS assess the cost effectiveness or cost reasonableness of a particular project? For example, in the context of infrastructure projects, how should we consider whether the costs of deploying broadband facilities are excessive?*

This is clearly one area where an engineering firm or consultant on retainer to NTIA/RUS needs to look at the reasonableness of the proposal. In Pennsylvania, as part of the state review process, we looked critically at the cost of the various proposals and often compared one to another. Some proposals seemed to be clearly out of synch with costs relative to populations served. This becomes even more difficult to do at a federal level without appropriate review from states and input from engineers or consultants.

*In BTOP, one of the Project Benefits that NTIA considers is "cost effectiveness," when scoring an application. This is measured based on the ratio of the total cost of the project to households passed. However, such costs will necessarily vary based on the particular circumstances of a proposed project. For example, extremely rural companies typically have much higher construction costs than more densely populated ones. Also, geographic areas that experience extreme weather or are characterized by difficult terrain will dictate higher per household costs. Similarly, the technology that is chosen to provide the service (e.g., fiber vs. wireless) would influence the costs. And finally, smaller companies as measured by subscriber count would necessarily have a higher cost per subscriber than larger companies. How should the agencies take these various factors into consideration when evaluating broadband infrastructure projects? What evidence should we require from applicants to ensure that unnecessary costs have not been added to the project?*

There are so many factors affecting the cost of the project- especially the middle mile construction projects – that real costs can only be ascertained by having a qualified engineering firm examine the project in detail. The question touches on many of the factors above which can influence costs.

Projects which leverage or build upon existing infrastructure should be graded higher than those which are building a project from scratch. In addition to being more 'shovel-ready', this would have the benefit of lowering cost and ensuring that projects have some base to build upon. Large scale projects which are being started with no existing infrastructure should be viewed with a higher degree of scrutiny.

*G. Other. What other substantive changes to the NOFA should RUS and NTIA consider that would encourage applicant participation, enhance the programs, and satisfy the goals of the Recovery Act?*

One obvious change is to give applicants more time to fill out the application. A fair amount of time would be 90 or 120 days. Since the NTIA has established that last second and third rounds will be combined as one, this allows an opportunity to extend the application process window.

The Commonwealth would also like to offer some recommendations that are aimed at improving the state review process:

- More time – 20 calendar days is quite challenging (situation will be similar or worse in round 2 since there are only 2 rounds); suggest at least 30 days given the expectation that there will be as many, if not more, applications filed in the final round.
- Insufficiency of information and a requirement for states to obtain information from applicants was part of the challenge. Consequently, NTIA should require applicants to share copy of application with states. This could be facilitated in several ways:
  - NTIA provides states with copy of full application (electronic referral)
  - NTIA requires applicants to share (courtesy) copy of their application with state at timing of filing with NTIA;
  - If states are expected to track down materials from applicant, explicitly state that the willingness of applicants to provide (or not) a copy of full application to states can be used as one of the review criteria
- Additionally, NTIA should provide states with a copy of the mapping particulars for each project that it is required to review. Specifically, at the start of the state review process, NTIA should deliver ESRI .shp file ('shape file') to states so that states can conduct an appropriate review and make determinations as to whether project recommendations are representative of all portions of state, and are not redundant or overlapping. Without official maps, states cannot comment with any degree certainty about availability, overlap, and compliance with definition of an applicant proposes to provide services in multiple states, the application must provide information on a state-by-state basis - service area, population served, expenditure, etc. Without this information it is all but impossible for any state to provide an honest assessment of such endeavors.
- Finally, ensure that the online listing of applications by state is comprehensive and accurate prior to commencing the state review process. The Commonwealth has become aware of a few projects, which, reportedly due to submitting a paper versus an online application or other circumstances, did not appear in the applicant database until after the state review process had already closed. At no time was the Commonwealth notified by NTIA that there had been additions. Due to this delay and oversight, some projects impacting Pennsylvania were not considered as part of the state review process, naturally a concern to the commonwealth and the affected applicants.

If the current review structure is retained, NTIA/RUS should establish formal scoring or weighting in the revised NOFA so that applicants know what weighting the various steps in the process with impact project applications. For example, guidelines should specify up-front that applications will assign 15% of total score to peer reviews; 15% weight to state reviews; and 70% to NTIA technical and programmatic review (illustrative purposes only). It is important for applicants and stakeholders to know what weight each review step will have. States are asked to make recommendations on projects, and find themselves placed in the awkward position of picking 'winners and losers', with no knowledge of what weight will be afforded to state input, if at all.



We thank you for the opportunity to provide input and we look forward to once again working with the Departments of Commerce (NTIA) and Agriculture (RUS) in Round Two in order to achieve the shared and mutual objective of providing or improving access to broadband services.

Respectfully Submitted,

A handwritten signature in black ink that reads "Naomi Wyatt". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Naomi Wyatt  
Secretary of Administration  
Commonwealth of Pennsylvania